Legislative Summary LS-438E

BILL C-5: THE SPECIES AT RISK ACT

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10 October 2002

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104-03207/

LEGISLATIVE HISTORY OF BILL C-5

HOUSE OF COMMONS	
Bill Stage	**Date**
First Reading:	9 October 2002
Second Reading:	9 October 2002
Committee Report:	9 October 2002
Report Stage:	9 October 2002
Third Reading:	9 October 2002

SENATE	
Bill Stage	**Date**
First Reading:	10 October 2002
Second Reading:	22 October 2002
Committee Report:	4 December 2002
Report Stage:	
Third Reading:	12 December 2002

Royal Assent: 12 December 2002

Statutes of Canada 2002, c.29

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BILL C-5: THE SPECIES AT RISK ACT

BACKGROUND

Bill C-5, the Species at Risk Act (SARA), was introduced and deemed to have passed all stages in the House of Commons on 9 October 2002.(1) This bill is identical to an earlier bill with the same title and number that had been tabled at the beginning of the 1st session of the 37th Parliament in February 2001, but that died on the *Order Paper* when Parliament was prorogued in September 2002. That earlier bill was the first piece of federal legislation dealing with the listing, protection and recovery of endangered species and other species at risk within federal jurisdiction.

Two other bills had preceded Bill C-5: Bill C-33, the Species at Risk Act, which was tabled in April 2000 and died on the *Order Paper* when the general election was called in 2000; and Bill C-65, the Canada Endangered Species Protection Act (CESPA), which was tabled in October 1996 and died on the *Order Paper* when the general election was called in 1997.

Bill C-5 is described as one part of a three-pronged federal strategy to protect species at risk, the other two components being stewardship and incentive programs, and the federal/provincial/territorial *Accord for the Protection of Species at Risk*. The bill would:

- create a legislative base for the scientific body that assesses the status of species at risk in Canada;
- prohibit the killing of extirpated, endangered or threatened species and the destruction of their residences;
- provide authority to prohibit the destruction of the critical habitat of a listed wildlife species anywhere in Canada;
- lead to automatic recovery planning and action plans through the listing of species at risk;

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(1) By a motion adopted on 7 October 2002, the House of Commons provided for the reintroduction in the 2nd session of legislation that had not received Royal Assent during the previous session and that died on the *Order Paper* when Parliament was prorogued on 16 September 2002. The bills would be reinstated at the same stage in the legislative process they had reached when the 1st session was prorogued.

- provide emergency authority to protect species in imminent danger, including emergency authority to prohibit the destruction of the critical habitat of such species;
- make available funding and incentives for stewardship and conservation action; and
- enable the payment of compensation where it was determined to be necessary.

The current Bill C-5 is virtually identical to the earlier Bill C-5 tabled in the previous session. It is also very similar to its predecessor, Bill C-33, although a number of minor changes and corrections have been made. Those two previous bills were consistent with Bill C-65 (CESPA), but with a number of significant differences. The bills varied in their scope and in their approach to the exercise of federal jurisdiction in the area of species protection. Other differences will be identified in the text of this Legislative Summary, which provides some comparative information about the predecessors to Bill C-5.

DESCRIPTION AND ANALYSIS

A. General Provisions

Preamble and Clause 1

The Preamble of the bill sets out a series of principles comprising the context and the legislative intention of the draft legislation. Many of its recitals, including those referring to the value of nature and wildlife to Canadians, were also found in the Preamble of Bill C-65. The Preamble states that wildlife has international value and that providing legal protection for species at risk would in part meet Canada's obligations under the United Nations *Convention on Biological Diversity*, which Canada has ratified. The precautionary principle is endorsed by the statement that "if there are threats of serious or irreversible damage to a wildlife species, cost-effective measures to prevent the reduction or loss of the species should not be postponed for lack of scientific certainty." Other recitals refer to the importance of cooperation between levels of government, which is to be promoted through the leadership of the Canadian Endangered Species Conservation Council. The roles of Canadian aboriginal peoples, individuals and communities are all cited as important to the conservation of wildlife species.

Several recitals in the proposed Preamble were new to Bill C-33, including those dealing with cooperation between governments, the leadership role of the Canadian Endangered Species Conservation Council, stewardship activities, community knowledge and interests,

traditional knowledge of the aboriginal peoples of Canada, and the importance of Canada's protected areas, especially national parks.

Two new recitals would be added to the Preamble in Bill C-5. One, which would be the 11th recital, would recognize that sometimes the cost of conserving species at risk should be shared. Another new recital, which would be the second-last one, would recognize that the habitat of species at risk is key to their conservation. Both of these additions reflect suggestions made by some witnesses who commented on Bill C-33.

The first clause gives the short title of the bill: the Species at Risk Act.

Clause 2 – Interpretation

Clause 2 sets out a series of definitions that would apply to the provisions of the bill. Many of the definitions are similar to those set out in Bill C-65, either in its original form or as amended.

The term "aquatic species" would mean a wildlife species that is a fish as defined in section 2 of the *Fisheries Act* (including shellfish, crustaceans, marine animals, as well as the eggs, sperm, spawn, larvae, spat and juvenile stages of those species), or a marine plant as defined in section 47 of that Act. Bill C-5 would add a straightforward definition of "conveyance." "Critical habitat" would be defined to mean habitat that is necessary for the survival or recovery of a species and identified as critical habitat in a recovery strategy or an action plan. The definition of "habitat" would include specifically, for aquatic species, the following elements: spawning grounds and nursery, rearing, food supply, and migration areas; for non-aquatic species, the definition would include the area or type of site where an individual or wildlife species naturally occurs. Also included in the definition for both types of species are any other areas on which they depend directly or indirectly to carry out life processes, or areas where they formerly occurred and have the potential to be reintroduced.

Consistent with the Bill C-65 definition, as amended, the proposed definition of "individual" would include an individual of a species, living or dead, at any developmental stage, including embryos, eggs, sperm, seeds, pollen and spores. As recommended by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), the definition in Bill C-5 would also include larvae and asexual propagules. The definition of "residence," consistent with its broadening by the Committee, would include dwelling-places such as dens or nests, occupied by

one or more individuals during all or part of their life cycles, including breeding, rearing, staging, wintering, feeding or hibernating.

"Wildlife species" would be defined as a species, subspecies, variety or geographically or genetically distinct population of animal, plant or other organism, other than a bacterium or virus, that is wild by nature and native to Canada or has been present in Canada without human intervention for at least 50 years. The proposed exclusion of bacteria and viruses is new to this bill. This definition recognizes, in addition to species and subspecies, "a variety or geographically or genetically distinct population," language that replaces the concept of biologically distinct populations. The latter term had been proposed for the first time in Bill C-5, and it attracted criticism from a number of scientists and other witnesses who testified before the Committee in the 1st session of the 37th Parliament.

The term "species at risk" would include the categories of extirpated, endangered or threatened species or a species of special concern. Each of these terms also would be defined.

- "Extirpated species" are those that no longer exist in the wild in Canada, but exist elsewhere in the wild.
- "Endangered species" would mean a wildlife species facing imminent extirpation or extinction.
- A "threatened species" is one that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction.
- "Species of special concern" (referred to as "vulnerable species" under Bill C-65 and until the year 2000 by COSEWIC) are wildlife species that may become threatened or endangered because of biological characteristics or identified threats. This proposed wording was changed in Bill C-5 to reflect the current COSEWIC definition.

The definition of "wildlife management board" is clarified by the wording of Bill C-5 to include any board or other body established under a land claims agreement that is authorized by the agreement to perform functions in respect of wildlife species.

Clause 2 would define "competent minister" to include the Minister of Canadian Heritage with respect to individuals in national parks or historic sites; the Minister of Fisheries and Oceans with respect to aquatic species not found in parks; and the Minister of the Environment with respect to all other individuals.

As was the case under Bill C-65, the definition of "federal land" in clause 2 is crucial to determining the scope of the bill. The definition would include land owned by the federal government, the internal waters and territorial sea of Canada, and reserves and other land set apart for the use and benefit of a band under the *Indian Act*.

Clause 3 – Aboriginal and Treaty Rights

This clause would provide, for greater certainty, that nothing in the bill could abrogate or derogate from aboriginal or treaty rights already protected by section 35 of the *Constitution Act, 1982*.

Clause 4 – Sedentary Living Organisms

Clause 4 would extend the application of the bill to "sedentary living organisms" as defined in subclause (2) outside the territorial sea of Canada. These organisms are those that remain in contact with the seabed, such as scallops, lobster or sea cucumbers. The extension of the bill to such organisms is consistent with Canada's authority under the *United Nations Convention on the Law of the Sea* (UNCLOS).

Clause 5 – Binding on the Crown

This clause would provide that the bill would bind both the federal and provincial governments.

Clause 6 – Purposes

Clause 6 sets out the purposes of the bill, the first of which is to prevent wildlife species from being extirpated or becoming extinct, and the second of which is to provide for the recovery of species at risk. The final purpose – managing species of special concern and preventing them from becoming endangered or threatened – was not included in the purposes clause of Bill C-65.

B. Structure of the Species Protection Regime

Clause 7 – Canadian Endangered Species Conservation Council

The Canadian Endangered Species Conservation Council ("the Council") would comprise the federal Ministers of the Environment, Fisheries and Oceans, and Canadian Heritage, as well as the provincial and territorial ministers responsible for wildlife species. Its

role would be to: provide general direction on COSEWIC's activities and on recovery strategies and action plans; and coordinate the species-conservation activities of the various governments. This coordination role was added to this clause in Bill C-65 at the committee stage. Participation in this Council was agreed to by the federal, provincial and territorial ministers responsible for wildlife in the 1996 *Accord for the Protection of Species at Risk*.

Clause 8 – Administration of the Act

Clause 8(1) would make the administration of the legislation the responsibility of the Minister of the Environment, although other ministers would also be given specific responsibilities under the bill. Subclause (2) would authorize any of the three competent ministers, after consulting the other two ministers, to delegate any of their powers or functions relating to enforcement under the bill to any government in Canada. Under Bill C-65, this power to delegate was specifically tied to enforcement and permit-issuing powers. Clause 8(3) would require that delegation under this clause be the subject of an agreement between the delegating minister and the delegate providing that any activities thus undertaken would have to be annually reported. The concept of reporting delegations was introduced into this provision of Bill C-65 at committee stage. The bill would require that such delegation agreements and annual reports be included in the public registry (clause 8(3)) within 45 days of completion.

Clause 8.1 – National Aboriginal Council on Species at Risk

Clause 8.1, added to Bill C-5 at committee stage, would create the National Aboriginal Council on Species at Risk. This body would include the federal Environment, Fisheries and Heritage Ministers as well as six representatives of aboriginal peoples, selected by the Environment Minister. Its role would be to advise the Canadian Endangered Species Conservation Council.

Clause 9 – Advisory Committees to Assist Environment Minister

This clause would empower the Environment Minister, after consulting the Heritage and Fisheries Ministers, to establish advisory committees to advise on the administration of the bill. The Environment Minister could also, after consulting the other Ministers and the Canadian Endangered Species Conservation Council, establish committees to advise the Council on matters related to its role.

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Clause 10 – Administrative Agreements

Clause 10 would permit any of the competent ministers, after consulting the others, to enter into an agreement with a government, organization or wildlife management board regarding any of that minister's administrative responsibilities under the bill, including preparing and implementing recovery strategies, action plans and management plans. Under clause 123, such agreements would have to be included in the public registry.

Clause 10.1 and 10.2 – National Stewardship Action Plan

Clause 10.1 would create the National Stewardship Action Plan. This plan would create incentives and measures to support voluntary stewardship action taken by governments, organizations or individuals in Canada. Specific components of the plan would be required under clause 10.2.

Clauses 11 to 13 – Stewardship

These clauses would expand the role of stewardship under this legislation beyond the proposal in clause 8 of Bill C-65, which would have provided for funding agreements regarding any wildlife species. Clause 11 of Bill C-5 would permit a competent minister, after consulting the other competent ministers and the Council, to enter into an agreement with a government, organization or person for the conservation of a species at risk. Clause 11 would require that such agreements provide for the taking of conservation measures and any other measures consistent with the purposes of the bill, and that agreements affecting listed species, or their critical habitat or residences, will benefit the species or enhance its chance of survival in the wild. In addition, conservation agreements could deal with monitoring the status of species, public education and awareness, recovery strategies, action and management plans, research, and the protection of critical habitat. Clause 12 would also permit such agreements to be made for species that were not at risk. Clause 13 would allow a competent minister to enter into an agreement providing for the costs of conservation measures, including funding of stewardship agreements.

Clauses 14 to 23 – Committee on the Status of Endangered Wildlife in Canada (COSEWIC)

Clauses 14 and 15 would establish a legislative basis for COSEWIC – a scientific body already established in Canada – and set out its functions, which would include:

- assessing the status of wildlife species and identifying threats to their survival;
- classifying species as extinct, extirpated, endangered, threatened or of special concern; alternatively, it could indicate that there was insufficient information to classify a species, or that the species was not currently at risk;
- determining when to assess particular species, with priority given to those most at risk;
- re-assessing species, developing criteria for assessing and classifying species, and recommending those criteria to the Environment Minister and the Canadian Endangered Species Conservation Council; and
- advising the Minister and the Council, and performing any other functions assigned by the Minister after consulting the Council.

Minor wording changes in clause 15(1)(b) and (c) are proposed in Bill C-5, to better reflect COSEWIC practice. Most significantly, the words "if necessary" in clause 15(1)(c) – ("if necessary, reclassify or declassify them") – would read "if appropriate."

Although Bill C-5 does not create any new powers or obligations with respect to transboundary species, clause 15(1) would require that COSEWIC indicate in assessments those species that migrate across, or have a range that extends across, an international boundary of Canada.

Clause 15(2) would require that COSEWIC carry out its functions on the basis of the best available information on the biological status of a species, including scientific, community and aboriginal traditional knowledge. Treaties and land claims agreements, where applicable, also would have to be taken into account.

Under clause 16, COSEWIC would comprise members appointed by the Environment Minister, after consultation with the Council and with any experts that the Minister considered appropriate. Clause 16(2) would require COSEWIC members to have expertise drawn from a variety of scientific or other disciplines. Members would be appointed for renewable terms of not more than four years (under Bill C-65, terms would have been for three years). Members would not be public servants, and their remuneration would be set by the

Minister of the Environment. Bill C-5 does not include the requirement proposed in Bill C-65 for COSEWIC members to be broadly representative of all regions of Canada.

The Minister would be permitted under clause 17, after consultation with the Council and COSEWIC, to establish regulations or guidelines regarding the appointment of members of COSEWIC, and the carrying out of its functions.

Under clause 18, subcommittees of expert specialists would have to be established to perform a variety of functions related to COSEWIC's responsibilities. Although the subcommittees would be chaired by COSEWIC members, other subcommittee members would not have to be members of COSEWIC. The chairperson and members of the aboriginal traditional knowledge subcommittee would be appointed by the Minister after consultation with aboriginal organizations, pursuant to clause 18(3).

Clause 19 would permit COSEWIC to make rules regarding the holding of its meetings, the selection of chairpersons, and the meetings and activities of subcommittees. The Minister would be required to provide COSEWIC with staff and administrative support (clause 20).

Assessments of the status of species would have to be based on status reports on the species prepared for or by COSEWIC pursuant to clause 21(1). The Environment Minister, after consulting the other competent ministers and COSEWIC, would be permitted to make regulations establishing the content of status reports.

Clause 22(1) would permit any person to apply to COSEWIC for an assessment or re-assessment of a species. Clause 22(2) would permit the Environment Minister, after consulting the other competent ministers and the Council, to make regulations about applications to COSEWIC under subclause (1). Under clause 23(1), COSEWIC would be required to assess the status of a wildlife species within one year of receiving a status report, and to give reasons for any assessment. Where an assessment arose out of an application, the applicant would have to be notified of the assessment and the reasons for it.

Clauses 24 to 26 – Reviews and Reports

COSEWIC would have to review the classification of each species at risk at least once every ten years, or more often if it had reason to believe that the status of the species had changed significantly (clause 24). Assessments and reasons would have to be provided to the Minister of the Environment and the Council, and be included in the public registry.

Clause 25(3) would require the Minister to include in the public registry, within 90 days of receiving a copy of an assessment from COSEWIC, a report on how the Minister intends to respond to the assessment, along with timelines to the extent possible.

COSEWIC would be required under clause 26 to report annually to the Council. Clauses 25(2) and 26 would require COSEWIC to prepare annually a complete list of species it has assessed, and include a copy of that list, as well as the organization's annual report, in the public registry.

Clauses 27 to 31 – List of Wildlife Species at Risk

Clause 27 would provide for a legal List of Wildlife Species at Risk to be created. On the recommendation of the Environment Minister, the Cabinet would be permitted to amend the List in accordance with subsections (1.1), (1.2) and (3) to add, reclassify or remove a listed species. Under clause 27(1.1), Cabinet could review an assessment received from COSEWIC over nine months, and add the species, decide not to add it, or refer the matter back to COSEWIC for further consideration. In either of the two latter cases, the Environment Minister would have to, with Cabinet approval, set out in the public registry the reasons for the action. Before the Minister makes recommendations to Cabinet, he or she must: take into account COSEWIC's assessment of a species; consult the competent minister or ministers; and consult any wildlife management board that was responsible for the species. Under clause 27(3), if Cabinet has not acted under 27(1.1) within nine months, the Minister would be required to amend the List in accordance with the COSEWIC assessment.

Under clause 28, a person concerned about an imminent threat to the survival of a species could apply to COSEWIC for an emergency listing of the species as an endangered species. The Minister would be permitted to consult the other competent ministers and the Council, and to make regulations dealing with such emergency listing applications. Copies of assessments under this clause would have to be provided to the applicant, the Minister and the Council, as well as being filed in the public registry.

If the Minister believed that there was an imminent threat to the survival of a species, clause 29 would require that he or she, after consulting the other competent ministers, recommend to Cabinet that the species be listed as an endangered species. The Minister's opinion could be based on his or her own information, or on COSEWIC's assessment. Clause 29(3) would relieve the Minister and Cabinet of the usual consultation and publication requirements in making emergency listings. Under clause 30, as soon as possible after an

emergency listing had been made under clause 29, COSEWIC would be required to have a status report prepared on the species; within one year, COSEWIC would have to confirm the classification, recommend reclassification, or recommend de-listing of the species. This one-year time limit represents a reduction from the two-year period that was proposed under Bill C-33. Where COSEWIC recommended reclassifying or de-listing, clause 31 would permit the Minister to recommend that Cabinet amend the List of Wildlife Species at Risk.

Clauses 32 to 36 – Prohibitions

Clauses 32 and 33, which set out the crucial prohibitions against killing species and damaging residences, must be read in light of clauses 34 and 35, which limit their application in the provinces and territories. Listed aquatic species and migratory birds protected under the *Migratory Birds Convention Act, 1994* would be protected wherever they were found.

Clause 32(1) would make it an offence to kill, harm, harass, capture or take an individual of a wildlife species that was listed as extirpated, endangered or threatened. It should be noted that by virtue of the *Interpretation Act*, attempted or incomplete offences would also be punishable under this bill. Clause 32(2) would prohibit the possession, collection, purchase, sale or trade of an individual of a listed extirpated, endangered or threatened species, or any derivative of such an individual.

Clause 33 would prohibit the damaging or destruction of the residence of a listed endangered or threatened species, or a listed extirpated species if a recovery strategy had recommended that the species be reintroduced into the wild in Canada.

Bill C-65 had proposed a specific prohibition extending automatic protection to international transboundary species; no such prohibition is included in Bill C-5.

Clauses 34 to 36 set out how the prohibitions in Bill C-5 would be applied. Clause 34 would provide that, other than for aquatic species and migratory birds, the prohibitions in clauses 32 and 33 would not apply within a province, except on federal lands, unless so ordered by Cabinet under clause 34(2). In other words, the prohibitions would apply automatically to aquatic species and migratory birds, and to all species on federal lands within a province. The application of the prohibitions could be extended to other species on provincial lands by Cabinet order. Cabinet would be permitted under clause 34(2), on the recommendation of the Minister, to order that clauses 32 and 33, or either of them, apply in non-federal lands in a province for non-federal species (meaning species that are not aquatic species or migratory birds

protected by the *Migratory Birds Convention Act, 1994*). Clauses 34(3) and (4) would require the Environment Minister to recommend such an order to Cabinet if he or she, after consulting the provincial minister, any authorized wildlife management board and the public, believed that provincial laws did not effectively protect the species or the residences of its individuals.

Similarly, under clause 35, the prohibitions would apply on federal lands within the territories, and on territorial lands only to the extent that this was set out in a Cabinet order. Aquatic species and their habitat, migratory birds, and lands under the authority of the Environment Minister or the Parks Canada Agency would be excluded from clause 35; that is, the prohibitions in clauses 32 and 33 would always apply to those species and on those lands. The Environment Minister would be required to recommend an order if he or she were of the opinion that the laws of the territory did not effectively protect the species or the residences of its individuals. Before making such a recommendation, consultation with the appropriate territorial minister and wildlife management boards would be required.

Clause 36(1) could extend the application of the federal prohibitions to wildlife species that were not listed under the federal legislation but were classified by a provincial or territorial minister as endangered or threatened. If Cabinet so ordered it under clause 36(2), this clause would prohibit the killing, possession or trade, and destruction of residences of individuals of such species on federal lands in the province or territory.

Clauses 37 to 46 – Recovery Strategies

Clause 37 would require the competent minister or ministers to prepare a recovery strategy for every species listed as extirpated, endangered or threatened. In preparing recovery strategies, action plans or management plans, clause 38 would require that competent ministers consider Canada's commitments to the conservation of biodiversity and to the precautionary principle.

Under clause 39, recovery strategies would have to be prepared in cooperation with the appropriate provincial and territorial ministers, with federal ministers having authority over land where the species was found, with any affected wildlife management board, and with anyone else the competent minister considered appropriate. Where applicable, recovery strategies would have to be prepared in accordance with the provisions of land claims agreements.

In preparing a recovery strategy, the competent minister would be required under clause 40 to determine whether the recovery of the species was technically and biologically feasible according to the best available information, including that provided by COSEWIC. If the recovery of a species was determined to be feasible, clause 41 would require the strategy to address the threats to the survival of the species and the species' habitat, and to include a series of other types of information about the species. The recovery strategy would have to identify the species' critical habitat, to the extent possible, based on the best information provided by COSEWIC, or a schedule of studies to identify critical habitat where available information is inadequate. If recovery was not feasible, the strategy would have to include reasons for this, together with information about the species and its critical habitat.

Under clause 41(3), the competent minister would be permitted to adopt a multi-species or ecosystem approach in preparing recovery strategies. Clause 41(4) would permit Cabinet, on the Environment Minister's recommendation after consulting the other competent ministers, to make regulations listing additional matters to be included in a recovery strategy.

According to clause 42, a recovery strategy would have to be completed and published in the public registry one year after a species was listed as endangered and two years after a species was listed as threatened or extirpated. For those species set out in Schedule 1, the competent minister would be required to include a proposed recovery strategy in the public registry within three years after section 27 comes into force, for endangered species, and within four years for threatened species. Within 90 days of the publication of the recovery strategy, the competent minister would be required under clause 43 to consider any comments received, make any appropriate changes, and publish a finalized version of the strategy. As a result of a change proposed in Bill C-5, this 90-day period would be broken down into an initial 60-day period for public comments to be filed (clause 43(1)), followed by 30 days for the competent minister to make any appropriate changes and file the finalized recovery strategy in the public registry (clause 43(2)).

Existing recovery plans that were considered to meet the requirements of clause 41 could be adopted by the competent minister as proposed recovery strategies, pursuant to clause 44, and included in the public registry. Under clause 44(2), any part of an existing strategy could be included in a recovery strategy. Clause 45 would permit recovery strategies to be amended at any time, and require the amendment to be included in the public registry. Any

amendment to the deadline for completing the action plan would have to be filed along with reasons for such an amendment. The consultation and comment period requirements of clauses 39 and 43 would have to be complied with, except where the competent minister considered the amendment to be minor.

The competent minister would have to report on the implementation of the recovery strategy within five years after it had been included in the public registry, and every five years thereafter. Such reports would also have to be included in the public registry.

Clauses 47 to 55 – Action Plans

Competent ministers would be required under clause 47 to prepare one or more action plans based on each recovery strategy. Bill C-5 would break down the recovery planning stage into two parts – first, the development of a recovery strategy, followed by the action plan. (Under Bill C-65, both components would have been combined in recovery plans.) Action plans would set out the measures to be taken to implement the recovery strategies, set timelines, and evaluate the socio-economic costs and benefits of implementation of the measures.

Action plans would have to be prepared in cooperation with provincial and territorial ministers and other federal ministers having authority over the areas where the species was found, affected wildlife management boards and aboriginal organizations, and any other appropriate person (clause 48). Action plans would have to be prepared in accordance with applicable land claims agreements and, under clause 48(3), in consultation with landowners, lessees and other affected persons.

Clause 49 would set out the required components of action plans, including identification of the species' critical habitat and proposed measures to protect it, monitoring methods, and an evaluation of the socio-economic costs of the plan. Other items could be added to the list of required contents by regulation.

Clause 50 would require that a proposed action plan be included in the public registry. After the action plan is published, any person would be permitted to file written comments with the competent minister, who could then make changes and publish a finalized version of the action plan within a further 30-day period. Clause 50(4) would permit the competent minister, if the action plan were not finalized in the time set out in the recovery strategy, to include in the public registry a summary of what had been prepared. Under clause

50(3), the competent minister could adjust a proposed plan within 90 days of including it in the public registry, and finalize it by including a copy of the final plan in the registry. Under clause 51, part or all of an existing plan could be adopted as an action plan for a wildlife species; and under clause 52, action plans could be amended (with consultation required for all but minor amendments) with any amendments included in the public registry.

The competent minister would be required under clause 53(1) to make regulations to implement action plans respecting aquatic species or migratory bird species wherever they were located, or respecting other wildlife species located on federal lands; however, regulations that related to the protection of critical habitat on federal lands could be made only under clause 59. The Minister of Indian and Northern Affairs would have to be consulted in relation to such regulations that would affect a reserve or other lands set aside for the use of a band under the *Indian Act*. Where appropriate, wildlife management boards would also have to be consulted. Regulations under clause 53 could incorporate provincial or territorial legislation, or other material. Clauses 53(5) and (6) would require the competent minister to consult territorial ministers before making regulations affecting land in a territory, except for regulations dealing with so-called federal species, aquatic species and migratory birds protected by the *Migratory Birds Convention Act, 1994*, or land under the authority of the Minister of the Environment or the Parks Canada Agency.

Clause 54 would permit the competent minister to use his or her powers under other Acts of Parliament for the purpose of implementing measures included in an action plan.

The implementation of an action plan would have to be monitored by the competent minister under clause 55 and assessed five years after the plan came into effect. Clause 55 would require the competent minister to report on implementation of the action plan, and the ecological and socio-economic impact of that action plan, after five years. A copy of the report would have to be included in the public registry.

Clauses 56 to 64 – Protection of Critical Habitat

Clause 56 would permit the competent minister, in consultation with the Council and any other person, to establish codes of practice, national standards, or guidelines regarding the protection of critical habitat.

Clause 57 would provide that the purpose of section 58 is to ensure that critical habitat, as identified, is protected within 180 days of the inclusion in the public registry of a recovery strategy or action plan identifying critical habitat. Such protection includes that provided under the provisions in any federal statute, including agreements under clause 11 and the application of clause 58(1) of Bill C-5.

Clause 58 would create a prohibition against the destruction of critical habitat of any listed endangered or threatened species – or an extirpated species if its reintroduction has been recommended – on federal land, and outside federal land if the species is an aquatic species or a migratory bird species protected under the *Migratory Birds Convention Act, 1994*. The prohibition would be mandatory for critical habitat on federally protected areas, such as national parks. Under 58(2), if critical habitat is in a national park, marine protected area, migratory bird sanctuary, or national wildlife area, the competent minister would be required to publish a description of that habitat in the *Canada Gazette* within 90 days after publication of the recovery strategy or action plan. The prohibition set out in 58(1) would apply to such habitat 90 days after the *Gazette* publication.

For critical habitat not in a national park, sanctuary or wildlife area, the subsection (1) prohibition would apply only to critical habitat specified in an order made by the competent minister, under 58(4). The competent minister would be required, within 180 days of the inclusion of the recovery strategy or action plan in the registry, and after consultation with all other competent ministers, to order such protection of critical habitat if it were not legally protected by any federal statute or an agreement under clause 11. However, if the competent minister did not make the order, he or she could, under 58(5)(b), include a statement in the public registry setting out how the critical habitat is protected by other measures. A further limitation in clause 58(5.1) specifies that for migratory birds not on federal land, the clause 58(1) prohibition applies only to critical habitat that is habitat in the meaning of the *Migratory Birds Convention Act, 1994* and that Cabinet specifies by order. Various consultation requirements are set out in clauses 58(6) to (9).

Clause 59 would permit Cabinet, on the recommendation of the competent minister, to make regulations to protect critical habitat on federal lands. The competent minister would be required to consult every other competent minister, and to make the recommendation if a recovery strategy or action plan identifies a portion of critical habitat of a listed species as

being unprotected and if the minister were of the opinion that protection is required. Where appropriate, territorial ministers, the Minister of Indian Affairs and Northern Development and any affected band, or wildlife management boards would have to be consulted.

Clause 60 would create a new prohibition protecting the habitat on federal land of species listed by provincial or territorial ministers as being endangered or threatened, provided the habitat was specified by Cabinet order.

Clause 61 would prohibit the destruction of the critical habitat of a listed non-federal endangered or threatened species on provincial or territorial lands. Clause 61(2) limits the application of this prohibition to the portions of critical habitat specified in a Cabinet order. The Minister of the Environment may recommend such an order to Cabinet on the request or recommendation of a provincial or territorial minister, or the Canadian Endangered Species Conservation Council. After consultation with the appropriate provincial or territorial minister, if the Minister were of the opinion that the critical habitat was not already protected, he or she would be required to make a recommendation under this clause. An order under clause 61(2) would expire in five years unless renewed by Cabinet, and could be repealed if the Minister felt it was no longer necessary to protect the habitat to which the order relates.

A competent minister would be permitted under clause 62 to enter into an agreement with any government in Canada, any organization or any person, to acquire land for the purpose of protecting critical habitat. Clause 63 would require the Minister to report regularly on steps taken to protect the critical habitat of a listed species if he or she believed that the habitat continued to be unprotected 180 days after the document identifying it as critical had been included in the public registry.

Under a new power proposed by clause 64, the Minister would be permitted to pay fair and reasonable compensation, in accordance with regulations, to any person for losses suffered as a result of any extraordinary impact of the application of clauses 58 (prohibitions against destruction of critical habitat on federal lands), 60 (prohibition against destruction of habitat of provincial/territorial species on federal lands), 61 (prohibition against destruction of critical habitat of federal species on provincial/territorial lands), or an emergency order. Clause 64(2) would require Cabinet to make regulations dealing with procedures, eligibility, amounts of compensation, and terms and conditions of payment.

Clauses 65 to 72 – Management of Species of Special Concern

"Species of special concern" are those that were referred to as vulnerable under Bill C-65. (COSEWIC used the term "vulnerable" for this category until 1999.) Clause 65 would require the competent minister to prepare a management plan for a species of special concern within three years of its being listed. The plan would have to include conservation measures, and could apply to more than one species. Clause 66 would require that management plans be prepared in cooperation with appropriate provincial and territorial ministers, federal ministers, wildlife management boards, aboriginal organizations, and any other person or organization considered appropriate. Such plans would have to be prepared, to the extent applicable, in accordance with land claims agreements. Clause 66(3) would require that management plans be prepared in consultation with landowners, lessees and others directly affected by the plan, including the government of any other country in which the species was found.

Management plans could be prepared with a multi-species or ecosystem approach, as appropriate. Completed management plans would have to be included in the public registry (clause 68), and the Minister could revise and finalize them within 30 days after a 60-day comment period.

Clause 69 would permit the competent minister to include an existing species conservation plan in the registry as the management plan for a species. Management plans could be amended at any time under clause 70, and amendments would have to be included in the public registry. The consultation requirements of clause 66 would also apply to amendments of management plans except where the amendments were minor.

In order to implement management plans, clause 71 would permit Cabinet, on the competent minister's recommendation, to make regulations for aquatic species or migratory birds, regardless of where they were found, or for other species on federal lands. If reserve lands were affected, the competent minister would first have to consult the Minister of Indian and Northern Affairs and the band. Similarly, affected wildlife management boards would have to be consulted. Provincial or territorial legislation, or other material, could be incorporated in the regulations by reference. Subsections 71(5) and (6) would require the competent minister to consult territorial ministers before making regulations affecting land in a territory, except for regulations dealing with so-called federal species, aquatic species and migratory birds protected

by the *Migratory Birds Convention Act, 1994*, or land under the authority of the Minister of the Environment or the Parks Canada Agency.

The competent minister would have to monitor the implementation of the management plan and assess its implementation five years after it had been included in the public registry (clause 72), and every five years thereafter.

Clauses 73 to 78 – Agreements and Permits

This series of clauses, dealing with agreements and permits authorizing activities that might otherwise be prohibited under the bill, is very similar to proposals under clauses 46 to 48 of Bill C-65 as amended.

Clause 73 would permit a competent minister to enter into an agreement, or issue a permit, authorizing a person to engage in an activity affecting a listed species, or its critical habitat or residences. Such an agreement would be possible only where the minister believed that such activity consisted of scientific research relating to the conservation of the species, or would benefit the species, or would have an impact on the species that was incidental. The activity would have to be seen, after due consideration, as the best of all reasonable alternatives. All feasible measures would have to be taken to minimize the impact on the species; and the activity could not jeopardize the survival or recovery of the species. The competent minister would be required under clause 73(3.1) to include in the public registry the reasons for any agreement or permit entered into or issued. In an area where a wildlife management board had authority to manage species, the board would have to be consulted, and where the species was found on a reserve or other Indian land, the band would have to be consulted. Agreements and permits would have to contain terms and conditions necessary to protect the species, minimize the impact on it, or provide for its recovery. Any agreement or permit would have to be reviewed in the event of an emergency order being made with respect to the species. The maximum term of an agreement would be five years, and of a permit, three years. The Environment Minister, after consulting the other competent ministers, could make regulations about such agreements and permits.

Clause 74 would allow for the recognition under clause 73 of agreements, permits, licences and orders under other statutes. Such documents would have the same effect as those under clause 73 if, before they were made, the competent minister believed that the requirements of clause 73(2) to (6) had been met, and after they were made, the competent

minister met the requirement to review under clause 73(7). Under clause 75, the competent minister could add to, revoke or amend terms and conditions of documents under other statutes, to protect a species or its critical habitat or residences, taking into account any applicable treaty or land claims agreement.

For the first year after the listing of a species, clause 76 would authorize Cabinet to suspend the application of the prohibitions under the bill (clauses 32, 33, 36, 58, 60 or 61, or a regulation under clauses 53, 59 or 71), to agreements, permits or other similar documents authorizing persons to engage in activities that might affect the species, or its critical habitat or residences. Clause 77 would require those granting permits under other federal statutes to consult with the competent minister, to consider the impact on the species' critical habitat, and to be convinced that all reasonable alternatives that would be less harmful to the species' critical habitat have been considered, and that all feasible measures will be taken to minimize the impact of the activity being authorized on that habitat. Clause 77(2) would provide, for greater certainty, that clause 58 (mandatory critical habitat protection within federal jurisdiction) applies even though a permit or licence has been issued under 77(1).

Clause 78 would allow for the recognition of agreements, permits, licences or orders under provincial or territorial statutes, on the same conditions as would apply to documents under federal statutes in clause 74.

Clause 79 – Project Review

Clause 79 would require those conducting environmental assessments under federal legislation to advise the competent minister immediately of any project likely to affect a listed wildlife species or its critical habitat. A similar provision was found in clause 49 of Bill C-65. Any adverse effects on the species or habitat would have to be identified. As well, if the project went ahead, measures would have to be taken to lessen and monitor those effects, in a way consistent with any applicable recovery strategies or action plans. The addition of the word "adverse" to this provision, as is proposed in Bill C-5, was recommended by a number of witnesses who commented on Bill C-33. "Project," for the purposes of this section, would be defined as it is in section 2 of the *Canadian Environmental Assessment Act*.

Clauses 80 to 82 – Emergency Orders

These clauses would permit Cabinet, on the recommendation of the competent minister, to make an emergency order to protect a species. The competent minister would be required to make such a recommendation when he or she believed that the species faced imminent threats to its survival or recovery and after he or she had consulted every other competent minister. Under clause 80(4)(a), emergency orders could identify habitat and create prohibitions or require actions to protect aquatic species. Under clause 80(4)(b), such orders could include the same types of provisions for migratory bird species, on federal or other lands. For non-federal species (neither aquatic nor migratory birds) on federal lands, emergency orders could include the same types of provisions (clause 80(4)(c)(i)). On land other than federal land, emergency orders related to non-federal species could identify only critical habitat and create prohibitions against activities that might harm the species (clause 80(4)(c)(ii)).

Clause 80(5) would exempt emergency orders from the application of section 3 of the *Statutory Instruments Act*, which provides for scrutiny of proposed regulations by the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice.

Clause 81 would relieve the competent minister of the requirement to make an emergency order where equivalent measures had been taken to protect the species under another federal statute. Where the competent minister believed that the species would no longer face imminent threats to its survival or recovery even if the emergency order were repealed, he or she would be required to recommend repeal of the order to Cabinet.

Clauses 82 to 83 – Exceptions to Prohibitions

Clauses 82 and 83 deal with the circumstances in which the prohibitions under the bill would not apply. None of the bill's prohibitions – clauses 32, 33, 36, 58, 60 and 61, regulations under clauses 53, 59, and 71, or emergency orders – would apply to persons engaged in any of the following activities: statutorily authorized public safety, health, national security or animal health activities; or activities authorized by an agreement or permit under the bill. Wildlife conservation activities authorized by conservation measures under land claims agreements would also have been included in clause 83(1) under Bill C-33, but this exemption has been moved to a new clause 83(3) in Bill C-5. Public safety, health, national security and animal health activities would be exempted from the application of the prohibitions only if so

authorized by statute and if the person exercising the power determined that the activity needed to be carried out for the protection of public safety, health (including animal and plant health) or national security, and if the person respected the purposes of the bill to the greatest extent possible. The prohibitions would not apply to persons engaged in activities permitted by recovery strategies, action plans or management plans, and authorized by federal statute, including regulations under this bill. Under clause 83(5), the following additional exceptions would apply where persons were in possession of species or their derivatives:

- if the item had already been in the person's possession when the species was listed;
- if the item was used for ceremonial or medicinal purposes;
- if the item had been legally acquired outside Canada and legally imported;
- if the item had been inherited from someone who possessed it legally;
- if the item had been held briefly in order to donate it to a museum, zoo, educational institution, scientific society or government; or
- if the person was otherwise exempted from the prohibitions by the regulations under clause 84 of the bill.

A provision of Bill C-33 has been removed from Bill C-5, which would have created what Environment Canada officials describe as an unintentional distinction in the application of the bill in the provinces and territories. Except with respect to aquatic and migratory bird species and in national parks, provisions of the bill relating to recovery strategies and action or management plans would only have applied in the territories to the extent that Cabinet has ordered, on the recommendation of the Environment Minister. The Minister would have had to consult the territorial minister and wildlife management boards, and to believe that territorial laws did not protect the species involved before making such a recommendation.

C. Enforcement Measures

Clauses 85 to 86 – Enforcement Officers and Inspections

A competent minister could, under clause 85, designate persons to act as enforcement officers under the bill. Provincial or territorial employees could not be designated unless their government employer agreed. Enforcement officers would be provided with

certificates of their designation as enforcement officers, which they would be required to show upon entering any place for enforcement-related purposes. Under clause 85(4), officers would have all the powers of peace officers, subject to any limitations specified by the minister when designating them. Subclause (5) would permit the competent minister to exempt enforcement officers and their staff carrying out their duties under the bill from the application of any of the bill's provisions, regulations or emergency orders.

Clause 86 would govern inspections under the bill. Under clause 86(1), for the purpose of ensuring compliance with the bill, enforcement officers could enter and inspect any place where they believed, on reasonable grounds, that something would be located or seized that had been used to contravene a provision, or that would provide evidence of a contravention. Enforcement officers would be specifically empowered to open containers, inspect and take samples of things, require the production of documents, and seize items. Clause 86(2) would permit officers to stop vehicles or other conveyances for the purpose of conducting inspections. Dwelling-places could be entered only with the consent of the occupant or person in charge, or under the authority of a warrant (subclause (3)).

The proposed requirements for granting a warrant to search a home are set out in clause 86(4). A justice of the peace or a provincial court judge could grant such a warrant on the basis of a sworn information (charging document) that: the conditions in subclause (1) existed (belief on reasonable grounds that evidence of a contravention would be found); entry of the dwelling-place was necessary and had been refused; or there were reasonable grounds to believe entry would be refused. Conditions could be specified in the warrant.

Although a warrant would not be required under clause 86(3) to enter a building other than a dwelling-place, clause 86(5) would set out the circumstances in which a justice of the peace or a provincial court judge could grant a warrant to enter such a building. The conditions would be the same as those under clause 86(4) (warrant to enter a dwelling-place) except that they would include circumstances where the officer was not able to enter without the use of force, or where the place was abandoned and all reasonable attempts to notify the owner or other person in charge of the place had been made. This requirement for notice to be given to the owner/operator could be waived under subclause (6) if the judge or justice was satisfied that attempts to give notice would be unsuccessful or not in the public interest. Force could not be used in executing warrants unless specifically authorized.

Under new powers proposed in clause 86(8), enforcement officers carrying out inspections could use computers found at the place to examine data, reproduce or copy printouts or other records, and could use copying equipment to make copies. Persons in control of the places being inspected would be required under clause 86(9) to cooperate with the enforcement officer in conducting the computer search.

Clauses 87 to 89 – Disposition of Things Seized

Under clause 87(1), sections 489.1 and 490 of the *Criminal Code* would apply to anything seized under a warrant or under the bill; the enforcement officer would be required to retain custody of the thing, subject to any order for its return under section 490 of the Code. Section 489.1 of the Code provides for the disposition of property seized by a peace officer either pursuant to a warrant or as otherwise authorized under federal law. Section 490 deals with the detention and return of things seized.

If the ownership of an item seized by an enforcement officer could not be determined, the item or proceeds of its disposition would be forfeited to the federal or the provincial government that employed the enforcement officer, pursuant to subsection (2) of clause 87. Clause 87(3) would permit enforcement officers to dispose of perishable items, and either to pay the proceeds to the lawful owner or retain them until the outcome of any proceedings was known. Clause 87(4) would permit enforcement officers to return to the wild any live individuals of species at risk. Clause 87(5) would permit the owner of a seized item to abandon it to either the federal or provincial government. Clause 88 would allow the competent minister to deal with items forfeited or abandoned under the bill.

Owners and those in lawful possession of things seized, abandoned or forfeited, once convicted under the bill, would be jointly and severally liable under clause 89 for all the costs of inspection, seizure, abandonment, forfeiture or disposition incurred by the government, to the extent that such costs exceeded any proceeds realized on the disposition.

Clauses 90 to 92 – Assistance to Enforcement Officers

Clause 90 would permit an enforcement officer carrying out duties under the bill to enter private property without liability for trespass. Clause 91 would require the owner of a place entered by an enforcement officer under clause 86, as well as those found in the place, to

assist the officer and to provide any information he or she required. Clause 92 would make it an offence to mislead or obstruct an enforcement officer acting under the provisions of the bill.

Clauses 93 to 96 – Investigations

Clause 93 would give Canadian residents the right to apply to the competent minister for an investigation of whether an offence had been committed or attempted under the bill. The form of such applications, to be prescribed by the competent minister, would include particulars of the applicant, the details of the alleged offence and evidence, and information about other witnesses or documents relevant to the allegation. This type of citizen-initiated action was proposed under clause 56 of Bill C-65. Clause 94 would require the competent minister to acknowledge receipt of the application within 20 days and, unless he or she decided that the application was frivolous or vexatious, to investigate it. The competent minister would have to give notice of any decision not to investigate within 60 days. Notice would not be required where an investigation of the alleged offence was under way apart from the application.

Under clause 95, documents and evidence could at any stage be sent to the Attorney General for consideration of whether an offence had been or was about to be committed. In Bill C-33, this clause included a requirement that the competent minister report to the applicant every 90 days. This requirement was deleted from Bill C-5.

Investigations could be suspended or concluded at any time if the competent minister decided that no further investigation was required or that no offence had been substantiated (clause 96(1)). The reasons for any suspension would have to be reported to the applicant in writing under clause 96(2), as would any subsequent decision to resume the investigation. At the conclusion of an investigation, clause 96(3) would require that the minister report in writing to the applicant and any person whose conduct had been investigated, stating the reasons for the conclusion, and the action proposed. The name or address, or any other information about the applicant, could not be disclosed to the person who was investigated.

Clause 97 – Offences and Punishment

Offences created by this clause would be hybrid offences; that is, at the Crown's election, the offences could be prosecuted by summary conviction or by way of indictment, with maximum fines ranging from $50,000 to $1,000,000, and more if a person re-offended. Under clause 97(1), every person who contravened clauses 32(1) or (2), 33, 36(1), 58(1), 60(1), 61(1),

91, 92, or any prescribed provision of a regulation or an emergency order, or who failed to comply with an alternative measures agreement under the Act, would be guilty of an offence under the bill. If the offence was prosecuted as a summary conviction offence, and the defendant was a corporation, other than a non-profit corporation, the maximum fine would be $300,000. If any other person, including a non-profit corporation, was found guilty of a summary conviction offence, the maximum penalty would be a fine of up to $50,000 or imprisonment for up to one year, or both. For indictable offences, the maximum fine would be $1,000,000 in the case of a corporate defendant, and up to a $250,000 fine and up to five years' imprisonment in the case of an individual or non-profit defendant. Regulations and emergency orders could prescribe which of their provisions would give rise to an offence. The penalties proposed in clause 97 of Bill C-5 are consistent with those proposed in the bill's predecessors, including Bill C-65, as amended.

Under clause 97(3), a person convicted of an offence for a second or subsequent time would be liable to pay maximum fines double those set out in clause 97(1). Offences continuing on more than one day could be prosecuted as separate offences for each day on which the prohibited activity took place. Subclause (5) provides that a fine imposed for an offence involving more than one plant, animal or other organism, could be calculated as though each plant, organism or individual had been the subject of a separate information. Clause 97(6) would allow the court, if satisfied that monetary benefit had accrued to the defendant as a result of the offence committed, to order payment of an additional fine in the amount of that benefit, even if the additional fine exceeded the maximum amount imposed under the bill.

Clause 98 – Officers of Corporations

Officers, directors or agents of corporations who directed, authorized, assented to, or acquiesced or participated in the commission of an offence under the bill would be deemed party to the offence and liable on conviction to punishment, whether or not the corporation itself had been prosecuted.

Clause 99 – Offences by Employees or Agents

Clause 99 would make it sufficient in a prosecution to establish that an offence had been committed by an employee or agent of the accused, whether or not the employee or agent was identified or prosecuted for the offence.

Clause 100 – Defence of Due Diligence

This clause would make available the defence of due diligence in preventing the commission of offences in prosecutions under the bill.

Clause 101 – Venue

Under clause 101, a prosecution for an offence could be started, heard and determined at the place where the offence had been committed, where the subject matter had arisen, where the accused had been apprehended, where the accused happened to be, or where the accused carried on business.

Clause 102 – Sentencing Considerations

Clause 102 would set out a series of considerations that would have to be taken into account by a court in sentencing an accused. Such considerations would include factors relating to the harm caused, the degree to which the offence was committed intentionally, and any history of non-compliance with wildlife protection legislation. The court would be required to consider all available sanctions, and to give particular attention to the circumstances of aboriginal offenders.

Clause 103 – Forfeiture

This provision would allow a court convicting an accused person under the bill to order the forfeiture of things seized, in addition to any punishment imposed. Clause 103(2) would require any seized thing not forfeited to the Crown to be returned to its owner.

Clause 104 – Retention or Sale of Things Seized

Where a fine was imposed, clause 104 would permit items that had been seized to be retained until the fine was paid, or sold; the proceeds would be applied to the payment of the fine.

Clause 105 – Orders of the Court in Addition to Punishment

This clause would allow a court that had convicted someone and imposed punishment to make additional orders aimed at preventing the convicted person from re-offending. The types of orders that would be permitted under the clause include an order:

(a) prohibiting the person from continuing or repeating the activities that led to the commission of the offence;

(b) requiring the person to remedy the harm caused;

(c) requiring that an environmental audit be performed;

(d) directing the person to publish the facts of the offence;

(e) for community service;

(f) for the person to provide certain information to the competent minister;

(g) for the payment of the cost of remedial or preventive action;

(h) for the payment of research costs;

(i) for the payment for scholarships for environmental studies students;

(j) for the posting of a bond to secure performance of an obligation under this clause; and

(k) requiring compliance with any other appropriate conditions.

Clause 106 – Suspended Sentence

Clause 106(1) would provide that where a court suspended the sentence of a convicted person under section 731(1)(a) of the *Criminal Code*, it would be able to make a probation order under the Code, as well as orders under clause 105. If the convicted person failed to fulfil an obligation under such an order or was convicted of another offence within three years, clause 106(2) would permit the court to impose any sentence that could have been imposed had the sentence not been suspended.

Clause 107 – Limitation Period

This clause would prevent summary conviction proceedings from being commenced more than two years after the date on which the subject matter of the proceedings became known to the competent minister. In respect of offences under this bill, this provision would supersede section 786 of the *Criminal Code*, which sets a six-month limitation period for summary conviction offences. There are no limitation periods of general application for proceedings on indictment, although in such cases the accused would have the benefit of section 11(b) of the *Canadian Charter of Rights and Freedoms*, which guarantees accused persons the right to be tried within a reasonable time, and section 7, which protects against undue delays in the prosecution process.

D. Alternative Measures

Clauses 108 to 119 would set up a process for dealing with contraventions of the prohibition clauses of the bill and its regulations and emergency orders, to provide a mechanism other than the criminal justice system for responding to offences under the bill. Such a system has been in place under the *Young Offenders Act*[2] for many years, providing a non-prosecution alternative to judicial proceedings against young persons alleged to have committed criminal offences. The *Young Offenders Act* provisions for alternative measures were constitutionally challenged as being *ultra vires* of Parliament, but were upheld by the Supreme Court of Canada in 1990 as a valid exercise of the criminal law power (*R.* v. *S. (S.)*, [1990] 2 S.C.R. 254).

Clause 108 – When Alternative Measures Could Be Used

Where a person was alleged to have committed an offence under the bill, clause 108 would permit the application of alternative measures, provided that this was not inconsistent with the purposes of the bill and the following conditions were met:

(a) the measures were part of an alternative measures program authorized by the Attorney General, after consultation with the competent minister;

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(2) Bill C-7, the *Youth Criminal Justice Act*, which replaced the *Young Offenders Act* (YOA), received Royal Assent in February 2002. Part I deals with "extrajudicial measures," the new term for what were formerly known as alternative measures in the youth criminal justice system. This type of disposition provides a means for young persons to be held accountable for their offending behaviour without proceeding with a formal charge through the courts.

(b) an information (charging document) had been laid;

(c) the Attorney General was satisfied that alternative measures would be appropriate, considering the facts of the offence and other factors relating to the accused and the protection of species at risk;

(d) the accused fully consented to participate;

(e) the accused and the Attorney General had entered into an agreement about the alternative measures within 180 days of the accused's being required to appear in court;

(f) the accused had been advised of the right to counsel;

(g) the accused had accepted responsibility for commission of the offence;

(h) there was sufficient evidence to prosecute; and

(i) the prosecution was not barred at law.

Clause 108(2) would make clear that alternative measures could not be used where the accused denied guilt or preferred to be dealt with in court. Under clause 108(3), any admission or confession made by a person in order to participate in the alternative measures program would not be admissible in evidence against the person in any civil or criminal proceedings.

The court would be required by clause 108(4) to dismiss a charge laid against the person in respect of the alleged offence where that person had complied with an agreement for alternative measures, or where the court was satisfied that prosecution would be unfair in view of the degree of compliance with the agreement that had been demonstrated. Under clause 108(5), however, the use of alternative measures to deal with a person would not be a bar to proceedings against that person under the bill. Clause 108(6) specifies that the clause would not prevent the laying of an information or proceeding with the prosecution of any offence in accordance with the law. This would permit a prosecution to go ahead where the accused failed to fulfil obligations under the alternative measures agreement.

Clause 109 – Terms and Conditions of Alternative Measures Agreements

This clause would provide that an alternative measures agreement could contain provisions setting out terms and conditions, such as the types of orders listed in clause 105, or other terms and conditions that could be set out in regulations. Governmental or non-governmental organizations could supervise compliance with alternative measures agreements.

Clause 110 – Duration of Agreement

According to clause 110, an alternative measures agreement could be in effect for up to three years.

Clause 111 – Filing in Court and Public Access

Clause 111 would require the Attorney General to consult the competent minister before entering into an alternative measures agreement, and to file the agreement with the court within 30 days of its signing. The agreement would be part of the court record, and the public would have access to it. As soon as all the terms and conditions of the agreement were met, or the charges dismissed, a report to that effect would have to be filed immediately. Certain types of information, such as trade secrets, could be filed in a confidential schedule to the report. The competent minister could disclose information contained in such schedules only in accordance with the *Access to Information Act*.

Clause 112 – Stay of Proceedings

Despite section 579 of the *Criminal Code* (which governs the Attorney General's ability to stay and recommence criminal proceedings), clause 112 would require the Attorney General to stay proceedings in respect of any alleged offence for which an alternative measures agreement was filed, or to apply to the court for an adjournment of such proceedings of up to one year after the expiry of the agreement. Under clause 112(2), proceedings stayed under subclause (1) could be recommenced without laying a new information or preferring a new indictment, by the Attorney General's giving notice of the recommencement to the clerk of the court. If no such notice were given within one year of the expiration of the agreement, the proceedings would be deemed never to have been commenced.

Clause 113 – Application to Vary Agreement

Under this clause, an accused person could apply to vary the terms and conditions of an alternative measures agreement. The Attorney General, after consulting the competent minister, could vary the agreement if such was desirable because of a material change in circumstances since the agreement had been concluded or last varied. Variations could decrease the duration of the agreement, or relieve the accused of compliance with part of the agreement. Varied agreements would have to be filed with the court.

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Clause 114 – Application of Provisions Dealing with Criminal Records

Clauses 115 to 117, which deal with criminal records, would apply only to persons who had entered into alternative measures agreements.

Clause 115 – Disclosure of Information in Records by Peace or Enforcement Officers

If necessary to the investigation of an offence, clause 115 would permit a peace officer or enforcement officer to disclose to a department or agency of a government in Canada any information (including fingerprints) in a record relating to an alleged offence. Information could be disclosed to an insurance company for the purpose of investigating a claim arising out of an offence.

Clause 116 – Government Records

Under this provision, the following persons or entities – the competent minister, an enforcement officer, and any government department or agency with whom the competent minister had entered into an agreement under clause 10 – would be allowed to keep records and use information obtained from the use of alternative measures for such purposes as: inspections and investigations under this bill; proceedings under the bill; the administration of alternative measures programs; and the administration of the bill. Those supervising alternative measures agreements could keep records and use the information for supervision purposes.

Clause 117 – Disclosure of Records

Clause 117 sets out a number of classes of persons to whom records under the alternative measures provisions could be released for particular purposes. Records under clauses 115 and 116 could be made available to:

(a) judges for proceedings under any Act against the same accused;

(b) police or enforcement officers for investigations of other offences by the same accused, or for the administration of the case to which the record related;

(c) government officials administering alternative measures or preparing a report related to the same accused;

(d) any person deemed by a judge to have a valid interest in the record, if disclosure was desirable in the public interest for research and the person obtaining the record undertook in writing not to disclose further the contents of the record.

Clause 118 – Information Exchange Agreements

This clause would enable a competent minister to enter into an agreement with a government department or agency for the exchange of information in order to administer the alternative measures program or prepare a report of a person's compliance with an alternative measures agreement.

Clause 119 – Regulation-Making Powers

Under clause 119, the competent minister could make a number of regulations about alternative measures, including regulations prescribing:

(a) the form of, and time limit for, applications to participate in alternative measures;

(b) the manner of preparing and filing reports about the administration of alternative measures agreements;

(c) costs of compliance with such agreements; and

(d) the terms and conditions that could be included in such agreements.

E. Public Registry

Clauses 120 to 124 – Public Registry

Clause 120 would require the Environment Minister to establish a public registry to facilitate access to documents related to matters under the bill. Clause 121 would permit Cabinet to make regulations regarding the form of the registry and access to it, after consulting the Minister of Canadian Heritage and the Minister of Fisheries and Oceans. Clause 122 would prevent civil or criminal proceedings from being brought against the Crown, the Minister or any official, for the good faith disclosure of documents through the registry. Clause 123 would set out all the documents that would also have to be included in the registry, such as regulations and orders made under the bill, agreements, COSEWIC's classification criteria, the List of Wildlife Species at Risk, and every annual report or general report on the status of wildlife, which the

Environment Minister must prepare under clauses 126 and 128. Various other provisions of the bill would also require the inclusion of other documents. Under clause 124, the Environment Minister could, on the advice of COSEWIC, decide not to release information about the location or habitat of a species, if that would be in the best interest of the species.

Clause 125 – Fees and Charges

Cabinet could, under clause 125, make regulations prescribing fees and charges for agreements and permits under clause 73 or for copies of documents or for the inclusion of documents in the public registry, or for exempting certain types of persons from the requirement to pay the fees and charges, or for other matters concerning the payment of fees and charges. Such regulations could be recommended by the Environment Minister and the President of the Treasury Board, after consulting the Minister of Canadian Heritage and the Minister of Fisheries and Oceans.

F. Reports and Review of the Act

Clauses 126 to 129 – Reports and Review of the Act

Clause 126 would require the Minister of the Environment to report annually on the administration of the bill, and to table the report in each House of Parliament within the first 15 sitting days after it was completed. This clause mirrors clause 101 of the former Bill C-65, including amendments that added several subclauses setting out specific items that would have to be included in the Minister's report. The annual report would have to include summaries of:

- COSEWIC's assessments and the Minister's response to them;
- the preparation and implementation of recovery strategies, action plans and management plans;
- agreements under clauses 10 to 13;
- permits and agreements under clauses 73, 75 and 76;
- investigations, enforcement and compliance; and
- regulations and emergency orders.

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Clause 127 would require the Environment Minister to convene expert roundtables every two years to advise on matters relating to the protection of wildlife species at risk. The Minister would be required to respond within 180 days to any written recommendations from these roundtables, and both the recommendations and the responses would have to be included in the public registry. This mechanism is being added to the bill, according to Environment Canada officials, in response to criticisms that the bill has too much discretionary language.

Under clause 128, the Minister would be required to prepare a general report on the status of wildlife species every five years after the coming into force of the clause. This report would also be tabled in each House of Parliament. Under Bill C-65, the first of these annual reports would have been required three years after the coming into force of the legislation.

A parliamentary review of the legislation would be required five years after the coming into force of clause 129.

G. Transitional Assessment of Species

Clauses 130 to 133 – Assessment of Species Included in Schedules

Schedule 1 would set out the List of Wildlife Species at Risk, containing 233 species in the four risk categories – extirpated, endangered, threatened and species of special concern. These species, having been re-assessed under the most current criteria by COSEWIC, would be the ones for which the bill's protections would commence immediately upon proclamation of the new law. Schedule 2 would contain the additional species, in the three highest-risk categories, that have yet to be re-assessed by COSEWIC. Schedule 3 would contain those species of special concern that have not yet been re-assessed. Several newly listed or reclassified species were included in the Schedules at Report Stage. Clause 130 would require COSEWIC to assess the status of each species in Schedules 2 and 3, identify risks to the species, and classify the species as extinct, extirpated, endangered, threatened or of special concern, or, alternatively, to indicate that there was insufficient information to classify a species or that the species was not currently at risk. For Schedule 2 species, assessments would have to be complete within 30 days of the coming into force of clause 14. For Schedule 3 species, assessments would have to be complete within one year after the competent minister or ministers

had requested an assessment. Species not classified within the deadline would be deemed to be classified as indicated in the Schedules, unless the deadline for assessment were to be extended by Cabinet order. In making these assessments, COSEWIC would be permitted to rely on reports prepared within the last two years before the legislation came into force.

According to clause 131, clause 27 (listing) of the bill would apply to species classified by COSEWIC under clause 130.

When Cabinet, as a result of an assessment under clause 130, added a wildlife species to the list, clause 132 would require that the recovery strategy for an endangered species be prepared within three years of the listing, and for a threatened species, within four years. When a species was listed as a species of special concern as a result of a clause 130 assessment, the management plan would have to be prepared within five years (clause 133).

H. Related Amendments

Clauses 134 to 136 – *Canada Wildlife Act*

Section 4(2) of the *Canada Wildlife Act* provides that the Environment Minister has certain powers related to the uses of public lands whose administration has been assigned to him or her under federal law because they are required for wildlife research, conservation or interpretation. Clause 134 would add a subsection (3), which would apply where public lands under the authority of another minister were needed for wildlife research, conservation or interpretation. In that case, Cabinet could, on the recommendation of both ministers, authorize the Environment Minister to exercise the powers listed in subsection (2) with respect to those lands.

Clause 135 would add a new section 4.2 to the *Canada Wildlife Act*, to allow the Minister to delegate any of his or her powers under that Act to any other federal minister, subject to any terms and conditions he or she specified.

Section 12 of the *Canada Wildlife Act* sets out Cabinet's regulation-making powers under that Act, including the power to make regulations "prohibiting entry, generally or for any specified period or purpose, of any person on lands under the administration of the Minister or on any part of those lands" under section 12(a). Clause 136(1) of Bill C-5 would add to section 12(a) "public lands referred to in an order under subsection 4(3)." Clause 136(2) would add the lands added under subsection 4(3) to subsections 12(i) and (j), which set out

regulation-making powers related to conservation measures and the establishment of facilities for research or conservation on public lands or protected marine areas within the Minister's authority.

Clause 137 – *Canadian Environmental Assessment Act*

This provision would add to the definition of "environmental effect" in the *Canadian Environmental Assessment Act* a new subsection referring to effects on a listed wildlife species, its critical habitat or the residences of any individuals.

Clause 138 – *Migratory Birds Convention Act, 1994*

This provision would permit the Minister to delegate to any government or government employee in Canada any of his or her enforcement powers under the *Migratory Birds Convention Act, 1994*, with terms and conditions.

Clauses 139 to 141 – *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (WAPPRIITA)

Clause 139 would permit the Minister to delegate any of his or her enforcement powers under the WAPPRIITA to any government in Canada, with terms and conditions. Animals and plants are defined under the WAPPRIITA by reference to their inclusion in appendices to the United Nations *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, ratified by Canada on 10 April 1975. Clause 141 would permit the Minister to recommend that Cabinet, by order, amend the definition of "animal" or "plant" in the WAPPRIITA, in order to prevent the import of any specimen of an animal or plant species that would be harmful to Canadian ecosystems or species. Such an amendment would apply for the period specified in the order, and not longer than one year.

I. Coming into Force

Under clause 142, the provisions of the bill would come into force on a day or days to be fixed by Cabinet order.

J. Schedules

Schedule 1 would set out the List of Wildlife Species at Risk, containing 233 species in the four risk categories – extirpated, endangered, threatened and species of special concern. These species, having been re-assessed under the most current criteria by COSEWIC, would be the ones for which the bill's protections would commence immediately upon proclamation of the new law. Schedule 2 would contain the additional species, in the three highest-risk categories, that have yet to be re-assessed by COSEWIC. Schedule 3 would contain those species of special concern, i.e., the lowest category of species at risk, that have not yet been re-assessed.

COMMENTARY

Momentum toward federal legislation to protect species at risk has been building in Canada for a number of years, at least since 1992 when Canada signed the United Nations *Convention on Biological Diversity* at the Rio Earth Summit. Environmentalists and others involved in the process that led to the development of Bill C-65, Canada Endangered Species Protection Act (CESPA), were disappointed when, after extensive study and amendment by the House of Commons Standing Committee on Environment and Sustainable Development, the bill died on the *Order Paper* on the 1997 dissolution of Parliament. Although Bill C-33 was heavily criticized, more disappointment followed its death on the *Order Paper* when the 2000 election was called. Bill C-5, the Species at Risk Act (SARA), while it differs from CESPA in a number of important ways, contains many of the same elements, including a number of the improvements that were added to CESPA at the committee stage.

Many observers have seen the protection of species at risk as an essential component of a strategy for conserving biological diversity in Canada, and have argued that the adoption of federal legislation to protect such species would be a crucial first step.[3] There are currently 402 wild species, subspecies or populations of wildlife on the List of Species at Risk

(3) For more information about species at risk, see Jean-Luc Bourdages and Christine Labelle, *Protecting Wild Species at Risk in Canada*, PRB 00-19, Parliamentary Research Branch, Library of Parliament, Ottawa, 10 October 2000.

compiled by COSEWIC, the Committee on the Status of Endangered Wildlife in Canada, in various risk categories.[4] Since 1978, COSEWIC has considered more than 570 species.

For a number of years, opinion polls have shown that Canadians express a consistently high level of concern about endangered species and widely see their protection as an area in which the federal government should exercise a strong leadership role. The majority of species at risk are in trouble because of threats to their habitat caused by human activity.

The term "biological diversity" (or biodiversity) refers to the variety of life in a specific area, which could be as small as a decaying log or as large as the entire country. It includes the variety of species and ecosystems on Earth, and the genetic differences of organisms, communities and populations. The many reasons for preserving biodiversity include: its intrinsic value; the rate at which it is disappearing; its value as a source of scientific knowledge and aesthetic pleasure; human dependence on it for food, medicines and other products; its contribution to moderating climate; soil conservation and pest and disease control; and our lack of knowledge about the biodiversity that exists in Canada and the consequences of failing to preserve it. Canada was the first industrialized country to ratify the United Nations Biodiversity Convention, which was signed at the 1992 Earth Summit and entered into force in December 1993.

The Canadian Biodiversity Strategy included, as means of meeting its goals, an examination by the federal, provincial and territorial governments of their current legislation to determine whether new legislation was required to protect species at risk. The preparation of the Strategy was one of the key obligations Canada incurred as a party to the Biodiversity Convention. Following the 1995 release of the Strategy, the federal government released a discussion paper entitled "A National Approach to Endangered Species in Canada," followed by a legislative proposal entitled "The Canadian Endangered Species Protection Act," and Bill C-65, CESPA.

On 2 October 1996, the federal, provincial and territorial ministers with responsibilities for wildlife management agreed in principle to the *Accord for the Protection of Species at Risk*.[5] Under the terms of the Accord, the ministers are committed to adopting a

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(4) The most recent COSEWIC List of Species at Risk is available on-line at http://www.cosewic.gc.ca/pdf/English/Species_at_risk_may_02_e.pdf. The May 2002 List includes 402 species at risk, including 125 endangered species and 100 threatened species.

(5) The Accord is available online at http://www.cws-scf.ec.gc.ca/sara/strategy/accord_e.htm.

national approach to the protection of these species, based on the underlying shared constitutional jurisdiction to legislate in the area of environmental protection. They agreed to establish complementary legislation and programs to provide for the protection of species at risk, and to cooperate across jurisdictions to deal with species that cross borders within Canada. Disputes are to be referred to the Canadian Endangered Species Conservation Council for resolution.

The federal government committed itself to introducing new species at risk legislation in the 1999 Speech from the Throne; and in December 1999, it released *Canada's Plan for Protecting Species at Risk.* Bill C-33 was tabled 11 April 2000, and generally met with negative comments from observers. The bill was seen as being inadequate to the job of providing species at risk with national protection and has been compared unfavourably with Bill C-65, or even with the no-legislation status quo. Similarly, from comments on the bill as introduced in the 1st session of the 37th Parliament, it would seem that the amendments made to the bill in that round were too minor to elicit significant change in reaction to it.

The three versions of SARA seem clearer in their contemplation of provincial and territorial roles in species protection than was Bill C-65, most likely because federal-provincial/territorial negotiations have progressed since 1997. Perhaps because of this, the scope proposed in Bill C-5 may be narrower than that proposed in CESPA. Bill C-5 as proposed would have applied to aquatic species and migratory birds wherever they appeared, but its application to other species would have been restricted to those found on federal lands, unless Cabinet ordered otherwise. There would be no automatic extension of the scope of the bill to species that cross international borders, as was proposed under Bill C-65. Depending on the safety net consultation process, Bill C-5's prohibitions could have been applied to non-federal species in the provinces or territories by Cabinet order under clauses 34 or 35.

One of the mechanisms proposed by Bill C-65 was the Endangered Species Protection Action, a new type of civil suit whereby Canadians could have compelled ministerial action. Although this remedy is not proposed by Bill C-5, members of the public would have at least three types of recourse under the new bill. They could:

- apply to have the status of a species assessed by COSEWIC;
- comment on recovery strategies prior to their receiving approval; and
- apply for an investigation into an alleged offence under the bill.

Bill C-5 is premised on a larger role for stewardship than was proposed in Bill C-65. When the Minister of the Environment announced each of the two versions of SARA, he highlighted this particular feature. SARA would promote and enable funding for voluntary conservation activities and conservation agreements by individuals, organizations, communities, businesses or governments to protect species and their habitat. Environmentalists – who would prefer to see a strong, mandatory regime that did not rely on political will – have criticized the voluntary and discretionary aspects of this portion of the bill. On the other hand, at least one group representing landowners has commented that Bill C-33 was a major improvement in that it acknowledged that farmers are good stewards of the land and have a stake in protecting wildlife.(6)

Some features of Bill C-65 that were identified as weak, particularly by environmentalists, were still present in Bill C-5 as proposed, including the concept of protecting residences, rather than habitat, and the listing by Cabinet of species at risk. Bill C-5 would have continued the concept of prohibiting damage to the residences of individuals of listed species, even though that approach has been criticized as insufficient for the provision of any real measure of protection. Indeed, environmentalists have likened such protection of residences to protection of a person's bedroom, while the rest of the house and neighbourhood is being demolished. Also, while both bills would legislatively establish COSEWIC as the scientific body responsible for identifying species at risk, both would leave Cabinet to decide whether a species should be listed in the regulations. Recovery strategies and action plans would, of course, then flow from Cabinet's listing of a species, rather than from the original scientific conclusion. This separation between the scientific and political processes has been justified on the grounds that it insulates the COSEWIC scientists from lobbying and political pressures, while leaving responsibility for the ultimate listing in the hands of elected decision-makers. It has been criticized, however, as allowing non-scientific considerations to creep into what should be the purely scientific process of identifying species at risk.

One of the unresolved areas of concern about CESPA was the question of compensation for landowners and others whose economic interests would be affected by the application of the legislation. Bill C-5 would introduce the concept of compensation for

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(6) Ted Menzies, President of the Western Canadian Wheat Growers Association, quoted in the article "Farm Lobby Group Praises Species Act," *Calgary Herald*, 14 April 2000, p. A12.

individuals, organizations, aboriginal peoples or businesses that suffered losses as a result of any extraordinary impact of measures to prohibit destruction of critical habitat. Regulations are to be promulgated under the bill setting out a process for providing compensation, and Environment Minister David Anderson announced on the release of Bill C-33 that a consultation process is under way for developing those regulations. Since the demise of Bill C-33, Dr. Peter Pearse, an economics and forestry professor at the University of British Columbia, has reported to Minister Anderson on the issue of compensation, and provided advice about the construction of a compensation scheme under Bill C-5.(7) The release of this report has advanced the debate about compensation under Bill C-5.

In the 1st session of the 37th Parliament, the House of Commons Standing Committee on Environment and Sustainable Development ("the Committee") held hearings on Bill C-5 and reported the bill to the House with significant amendments. Several of the most important changes were reversed at Report Stage in the House. Most significantly, the Committee had amended the listing process under clause 27, and those changes were changed in one minor respect at Report Stage. Although Cabinet would still retain control of the listing of species under the bill, as amended the provision would permit Cabinet to amend the List, on the recommendation of the Minister, within nine months of the assessment being received. Thereafter, if Cabinet failed to act within nine months, then the Environment Minister would be required to amend the List in accordance with the COSEWIC recommendation. Although this is not the strictly scientific listing process advocated by many witnesses, the amendment reflects the concern expressed by witnesses about political involvement in the listing process. At Report Stage, the deadline for Cabinet action was changed from six to nine months.

The Committee's changes to clauses 34 and 35 during the 1st session of the 37th Parliament, which would have altered the application of the prohibitions contained in clauses 32 and 33, were reversed when the bill was considered at Report Stage. The effect of the Committee's amendments to these clauses, in general terms, would have been to apply the prohibitions in the provinces and territories for all federal species, and for other species by Cabinet order if the laws of the appropriate province did not protect the species. As amended at Report Stage and later reintroduced in the current session of Parliament, the original application

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(7) Peter Pearse's report to the Minister of the Environment on the principles of compensation under SARA was released in December 2000, and can be found on-line at http://www.cws-scf.ec.gc.ca/sar/pdf/comp_e.pdf.

of the prohibition clauses was restored. Clause 34 would provide that the prohibitions would apply automatically to federal species (aquatic and migratory birds), and to all listed species on federal lands. Their application could be extended, by Cabinet order, to other species on provincial lands, on recommendation of the Environment Minister. Similarly, under clause 35, the prohibitions would apply automatically to federal species and on federal lands within the territories, and to other species, elsewhere on territorial lands, only to the extent that this was set out in a Cabinet order.

Clauses 57 to 61, dealing with habitat protection, were also significantly altered in the House during the 1st session of the 37th Parliament, after a struggle between the Government and the proponents of the Committee's changes to the bill. As detailed above, clause 58 would provide for a limited form of mandatory habitat protection within federal jurisdiction – meaning that the identified critical habitat of listed species on federally protected lands, after certain publication and consultation requirements have been met, would be protected from destruction under the clause. Further regulations to protect critical habitat could be made under clause 59. Clause 61 would prohibit the destruction of any portion of the critical habitat of a listed non-federal endangered or threatened species on provincial or territorial lands, so long as that portion is specified in a Cabinet order.

After much debate in the 1st session of the 37th Parliament, the clause permitting compensation for landowners and others adversely affected by conservation measures under the bill, formerly clause 64 and re-numbered 63, was amended to include the guiding words "fair and reasonable compensation."